Supreme Court, U.S.
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No. 89-2009

In The

Supreme Court of the United States

October Term, 1989

CLIFT C. LANE and DOROTHY P. LANE,

Petitioners,

v.

JOHN E. PETERSON, JR. and EDWARD H. COVELL, individually and as members of the SPECIAL PANEL, AND WILLIAM B. SULLIVAN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' STATEMENT OF QUESTION PRESENTED

Did the courts below err in disposing of this case on *res judicata* and collateral estoppel grounds where analogous breach of fiduciary duty claims were adjudicated against the Lanes in prior litigation?

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STATEMENT OF THE CASE

Since 1986, the Lanes have filed five separate suits in four different courts, all stemming from a single stock transfer transaction that took place in July of 1985. The Lanes have unsuccessfully appealed adverse trial court decisions to the Eighth Circuit four times and sought review by this Court once last year.[1] Each appeal rested on allegations that the various participants in the transaction committed fraud or breached fiduciary duties.

The Lanes' statement of the case misrepresents or omits numerous facts that were adjudicated previously by the trial courts and appellate court panels that have reviewed the Lanes' testimony. And yet the very fact that such prior judicial review has occurred is precisely the reason why most of the Lanes' factual misrepresentations are, for purposes of this petition, immaterial. *The courts below disposed of this case on res judicata and collateral estoppel grounds*. These rulings, in turn, were based on the Lanes having previously presented and lost analogous claims in a five-day trial before the United States District Court for the Western District of Arkansas and, later, before the Eighth Circuit Court of Appeals. *Lane v. Peterson*, No. 86-4069, slip op. (W.D. Ark. July 2, 1987), *aff'd*, 851 F.2d 193 (8th Cir. 1988), *on motion to reopen proceedings*, No. 86-4069, slip op. (W.D. Ark., Jan. 18, 1989), *aff'd*, Nos.

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[1] *Lane v. Peterson*, No. 89-594, *cert. denied*, 110 S. Ct. 541 (1989). In addition, approximately one week after the docketing of this case, the Lanes filed an additional petition for writ of certiorari in a related case against one of the respondents in this case. *Clift C. Lane, individually, et ux., Petitioners v. William B. Sullivan, et al., Respondents*, No. 90-42.

89-1329 & 89-1508, slip op. (8th Cir. July 17, 1989) (per curiam), *cert. denied*, 110 S. Ct. 541 (1989). Thus, for purposes of this petition, most of the factual misrepresentations are relatively inconsequential.

Nevertheless, one of the Lanes' representations deserves comment. The Lanes imply that the respondents never raised *res judicata* or collateral estoppel at the trial court level. In actuality, respondents repeatedly raised the issue in their motions, briefs, answer, and other trial court filings. Indeed, these issues provided the impetus for the dispositions rendered by the trial court and court of appeals below.

The procedural history of these cases also bears clarification. The Lanes raised analogous claims during a five-day trial before the United States District Court, Western District of Arkansas, in 1987. They lost, *Lane v. Peterson*, No. 86-4069, slip op. (W.D. Ark. July 2, 1987), and appealed to the United States Court of Appeals for the Eighth Circuit. They lost again, 851 F.2d 193 (8th Cir. 1988), and requested a rehearing. This, too, was denied. Order, August 2, 1988. The Lanes then sought to reopen the original trial court proceedings. The trial court rebuffed these efforts and imposed sanctions. *Lane v. Peterson*, No. 86-4069, slip ops. (W.D. Ark. Jan. 18 and Mar. 6, 1989). The Lanes appealed yet again. The Eighth Circuit affirmed both the refusal to reopen proceedings and the imposition of sanctions. *Lane v. Peterson*, Nos. 89-1329 & 89-1508, slip op. (8th Cir. July 17, 1989). The Lanes then petitioned this Court for a writ of certiorari, which was denied on December 4, 1989. 110 S. Ct. 541 (1989).

Meanwhile, the Lanes had instituted this action before a different trial judge in another division of the Western District of Arkansas. In a sequence of three orders, that trial judge pointed to the previous case the Lanes had prosecuted and dismissed the Lanes' claims primarily on *res judicata* and collateral estoppel grounds. *Lane v. Peterson*, No. 88-2145, slip ops. (W.D. Ark. Dec. 23, 1988, Apr. 17 and July 6, 1989). The Lanes again appealed to the Eighth Circuit. The Eighth Circuit affirmed, finding that *res judicata* barred all claims against respondents Peterson and Covell since the Lanes had raised analogous breach of fiduciary duties claims in the prior case. (Pet. App. 10a, 13a) It also concluded that collateral estoppel barred the primary claims against the other respondent. (Pet. App. 13a-16a) *Lane v. Peterson*, 899 F.2d 737 (8th Cir. 1990). This petition for writ of certiorari then followed.

REASONS FOR DENYING CERTIORARI

Last year, this Court denied a petition for a writ of certiorari filed by the same petitioners. *Clift C. Lane, et ux. v. John E. Peterson, Jr., et al.*, No. 89-594, 110 S. Ct. 541 (1989). In that prior petition ("*Lane I*"), the Lanes argued that the lower courts had failed to apply Arkansas law pertaining to a fiduciary's obligations and liabilities and had erred by refusing to reopen the proceedings to police alleged self-dealing by the respondent fiduciaries in connection with a stock transfer transaction in 1985. The Lanes raise the identical issues in this petition, which asserts that the lower courts erred in failing to apply the law pertaining to fiduciary duties. Like its predecessor, the instant petition should be denied.

The Decision Below Does not Create an Exception to This Court's Prior Holdings Regarding Fiduciary Duties

The Lanes' petition casts this case as one involving application of the law of fiduciary duties. They complain that by failing to address the merits of their underlying claims, the Eighth Circuit's decision below somehow conflicts with or creates "an exception" (Pet. 7) to this Court's decisions on treatment of fiduciaries.

This alleged conflict is illusory. The Eighth Circuit's decision below simply applied *res judicata* and collateral estoppel principles to prevent the Lanes from relitigating their fiduciary duties claim. Because the Eighth Circuit resolved this case based on *res judicata* and collateral estoppel, it never had to address the substantive merits of the underlying fiduciary duties issues (except to note that analogous claims had been decided on the merits against the Lanes in the preceding *Lane I* litigation, Pet. App. 10a-11a). Absent some ruling on the merits in this case, the Eighth Circuit decision could not possibly stand as "an exception to this Court's holdings" on fiduciary duties. In short, no conflict exists between the Eighth Circuit's decision below and prior precedent from this Court regarding fiduciaries.

The Lanes Demonstrate no Error in the Lower Courts' Application of *Res Judicata* and Collateral Estoppel to Justify Review

If the Lanes were to have any dispute to air before this Court, it would be that the Eighth Circuit somehow erred in its application of *res judicata* and collateral estoppel

principles. There was no error. The court below charted the history of the original (*Lane I*) litigation, which had focused heavily on alleged breaches of fiduciary duties, and noted that the instant case arose out of the same July 22, 1985, stock transfer transaction. (Pet. App. 10a) Implementing the test embraced under the *Restatement (Second) of Judgments* § 24, comment a at 197 (1980), the Eighth Circuit concluded that the "claims in this case arise out of the same nucleus of operative facts involved in *Lane I*. Thus, the doctrine of *res judicata* bars the Lanes' claims against Peterson and Covell, the two defendants herein who were parties in *Lane I*." (Pet. App. 13a) The pertinent claims against respondent Sullivan were deemed barred by collateral estoppel.[2]

Interestingly enough, the Lanes cite not a single case *nor* do they otherwise suggest that the Eighth Circuit's application of such *res judicata* and collateral estoppel principles conflicts with the decisions of this Court or of other courts of appeal on *res judicata* and collateral estoppel. In fact, the Eighth Circuit's application of *res judicata* and collateral estoppel is entirely sound and consistent with the *Restatement (Second) of Judgments* and with analogous rulings by other courts. Seen in this light and considering the fact that the Lanes have already attempted to litigate and relitigate the same transaction, the matter should finally be laid to rest.

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[2] The court found also that no private right of action arose under two other federal statutes the Lanes had sought to invoke against Sullivan, noting further, that even if such private actions were authorized, the claims would be barred by collateral estoppel. (Pet. App. 15a-16a)

CONCLUSION

Although the underlying litigation is important to the actual parties, it does not involve jurisprudential principles that are unique or particularly noteworthy. The Eighth Circuit properly concluded that the Lanes' claims were barred by *res judicata* and collateral estoppel. This decision does not conflict with rulings from other courts, nor does it implicate important federal jurisdictional or procedural issues. In short, there is no compelling reason to revisit the matter. Accordingly, this frivolous petition for certiorari should be denied.

Respectfully submitted,

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